

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Brian Hardingham	Team: Team # 1	CCRB Case #: 200512992	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 10/26/2005 1:00 PM	Location of Incident: Seagirt Boulevard and Beach 20th Street	Precinct: 101	18 Mo. SOL 4/26/2007	EO SOL 4/26/2007	
Date/Time CV Reported Fri, 10/28/2005 3:13 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Fri, 10/28/2005 3:13 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Carlos Fabara	01279	922317	101 PCT
2. POM Eric Konoski	26428	930497	101 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Florio	29396	930165	101 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Carlos Fabara	Abuse: Sgt. Carlos Fabara stopped and questioned § 87(2)(b)	
B.POM Eric Konoski	Abuse: PO Eric Konoski stopped and questioned § 87(2)(b)	
C.SGT Carlos Fabara	Abuse: Sgt. Carlos Fabara frisked § 87(2)(b)	
D.POM Eric Konoski	Abuse: PO Eric Konoski frisked § 87(2)(b)	

Synopsis

§ 87(2)(b) filed this complaint with the CCRB in-person on October 28, 2005. She stated that her son, § 87(2)(b) had been stopped and frisked by three officers as he exited a CVS pharmacy on Beach 20th Street and Seagirt Boulevard in Queens. The three officers were identified through investigation as Sgt. Carlos Fabara, PO John Florio and PO Eric Konoski, all of the 101st Precinct. § 87(2)(b) stated that he saw the three officers in the CVS as he waited on line and had recognized PO Eric Konoski because PO Konoski had previously arrested him for § 87(2)(b). He and the officers did not say anything to each other, but as he exited, Sgt. Fabara took hold of him and PO Konoski frisked him. § 87(2)(g)

§ 87(2)(b) During the stop, the officers claimed that § 87(2)(b) that he had recently been arrested for possession of a firearm and asked him how he had been released. § 87(2)(b) said that this was not true and that he had never been arrested for firearm possession. After the officers frisked him, they allowed him to leave the area. § 87(2)(b) went home and told his mother what happened. § 87(2)(b) then went to the scene where she spoke with Sgt. Fabara and obtained his shield number.

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) was interviewed at the CCRB on October 28, 2005. [Encl. 9a-e]

§ 87(2)(b) filed this complaint at the CCRB in person. She stated that between 1:00 p.m. and 1:30 p.m. on October 26, 2005, § 87(2)(b)'s son, § 87(2)(b) (b. § 87(2)(b)), was stopped by police officers outside of a CVS pharmacy on the corner of Seagirt Boulevard and Beach 20th Street in Far Rockaway, Queens.

§ 87(2)(b) sent § 87(2)(b) out to the store at about 12:55 p.m. to get some milk for an infant they were caring for. He came back with the milk at 1:30 p.m. Since it only usually takes about five minutes to go to the store, § 87(2)(b) asked him what happened to him. § 87(2)(b) is certain of the time that this occurred because she is § 87(2)(b) and intended to leave for her 3:00 p.m. tour at 1:00 p.m. § 87(2)(b) told his mother that three plainclothes officers had stopped him in front of the pharmacy. He told his mother that the officers had been in the store making a purchase when they first saw him and that they stopped him as he was coming out of the store with his purchase. He said that the officers told him to put his hands against the wall and then frisked him. They told him that they arrested him a few weeks ago for possession of a gun and asked what he was doing out of jail.

After hearing her son's story, § 87(2)(b) went to the CVS to see if she could find the officers herself. Two of the officers were in a gray sedan that was sitting in the parking lot and the third one was standing next to it. All of them were in casual plainclothes. § 87(2)(b) noted that the license plate of the car was § 87(2)(e). When § 87(2)(b) first approached the officers, the driver's side door was open and Sgt. Carlos Fabara, of the 101st Precinct, was standing five feet in front of the car. § 87(2)(b) had recognized the officers based on her son's description of them. When asked what that description was, § 87(2)(b) said that she wasn't trying to be disrespectful, but that her son had said that the sergeant had a "girly look" and that if you observed him from behind, you could easily assume that he was female.

§ 87(2)(b) went up to Sgt. Fabara and asked him why her son was frisked ten minutes beforehand. Sgt. Fabara told § 87(2)(b) that he was sure that her son had been arrested for possession of a gun two weeks earlier and he was frisked because of this arrest. § 87(2)(b) stated that her son had not been arrested for possession of a gun and that the officers were using this as an excuse to stop him. They argued about this point for a little while and walked over to the driver's side door as they did so. § 87(2)(b) then said, "Excuse me, I need to know your name and your shield number, sir," but he did not reply to her request.

An officer with blond hair sat in the back driver's side seat and the third officer sat in the passenger seat. The blond-haired officer in the back was identified through investigation as PO Eric Konoski of the 101st Precinct. The officer in the passenger seat was identified through investigation as PO John Florio of the 101st Precinct.

As § 87(2)(b) and Sgt. Fabera approached the car, PO Konoski rolled down his window a little bit. § 87(2)(b) said, "I also need you two officers' names and shield numbers as well." The two officers just looked at her for a while, then PO Konoski said, "Who are you?" § 87(2)(b) informed him that they had just stopped her son and that she was a § 87(2)(b) officer. PO Konoski then asked her for § 87(2)(b) her ID, so she showed them to him. She then asked for the officers' names and shield numbers again but none of them replied.

§ 87(2)(b) told the officers that she was going to be filing a complaint about them and Sgt. Fabara said, "Go ahead," and verbally provided her with his name and shield number at this point. She then asked him for the names of the other officers, but he said, "Don't worry about them." § 87(2)(b) took out a piece of paper and put it on his hood to write the name down. He told her not to put the paper on his car so she placed it on a nearby car and recorded his name and shield number. The sergeant spelled out his name for her.

The sergeant did not provide any reason for stopping § 87(2)(b) except that he had been recently arrested for possession of a firearm. He did not mention any further information about this gun arrest; he just repeatedly said that he was absolutely sure that her son was involved. § 87(2)(b) is certain that her son was never arrested for gun possession.

Results of Investigation

§ 87(2)(b) was interviewed at the CCRB on October 31, 2005. [Encl. 10a-c]

At about 1:00 p.m. on October 26, 2005, § 87(2)(b) walked from his mother's apartment to a CVS pharmacy at Beach 20th Street and Seagirt Avenue in Far Rockaway. He purchased some teething cream and a can of milk for a baby that his mother was taking care of. He was wearing baggy sweatpants with two pockets in the front, a hooded Gap sweatshirt with a single pocket in the front, sneakers and a black do-rag. § 87(2)(b) has a short goatee. When he was standing in line, he saw a plainclothes police officer who had locked him up for having a pocket knife two or three months beforehand. This officer is white, stocky, about 5'8" tall, and 26 to 27 years old. This officer was identified through investigation as PO Eric Konoski of the 101st Precinct. § 87(2)(b) recognized PO Konoski (though he did not know his name) but he and the officer did not speak to each other at this time. Two other officers were with PO Konoski. They were identified through investigation as Sgt. Carlos Fabara and PO John Florio, both of the 101st Precinct.

The officers left CVS before § 87(2)(b) did. When § 87(2)(b) walked out the door, PO Konoski grabbed him, pulled him to the left of the door and said, "Don't move. Don't dig in your pockets. Don't do nothing." Sgt. Fabara said, "Go against the wall," then took both of § 87(2)(b)'s hands, lifted them over his head and pinned them against the wall. At this point, § 87(2)(b) was leaning against the wall sideways. His left shoulder and his hands were actually touching the wall and Sgt. Fabara stood facing him and gripped his hands. § 87(2)(b) asked the officers why they were stopping him and Sgt. Fabara said, "Didn't we lock you up for a gun? Do you have a gun on you?" PO Konoski then said, "Yeah, we locked him up on Central Avenue a couple months back." § 87(2)(b) said, "No, you never locked me up for a gun." He then asked PO Konoski if he had locked him up § 87(2)(b) a while beforehand. PO Konoski said that that wasn't him. PO Konoski then patted § 87(2)(b) down, pulled his boxer shorts away from his body and looked down at his behind, patted down his behind on the outside of his pants and reached in both of § 87(2)(b)'s pants pockets. The only thing that § 87(2)(b) had in his pockets was change and a CVS discount card. He was not carrying a wallet, keys or anything else at the time. The officer did not remove the change or the card from § 87(2)(b)'s pockets. The teething gel and the milk was in a bag that § 87(2)(b) was still holding over his head. As he was doing this, Sgt. Fabara asked § 87(2)(b) if he was "cheeking" something, meaning hiding something between the cheeks of his behind. § 87(2)(b) said, "I'm not cheeking. I don't have

anything on me.” PO Florio stood two or three feet behind § 87(2)(b) and to his right for the duration of the incident. He did not say anything.

After the search, the officers let § 87(2)(b) go and one of them asked him how he got out of jail. § 87(2)(b) said, “If I had a gun, why would I be out on the street?” One of the officers then said, “Yeah, you got out on bail,” and then the officers got in a gray Chevrolet Impala and § 87(2)(b) left the scene. § 87(2)(b) was stopped for a total of five minutes.

§ 87(2)(b) explained that he had seen Sgt. Fabara before. § 87(2)(b) had been arrested for § 87(2)(b) and was being taken to the precinct in the back of an RMP when a call came over the radio about someone having a gun. The RMP went to the location (somewhere on Central Avenue in Far Rockaway) and a young male who had been arrested for having the gun was put in the back of the RMP with § 87(2)(b). § 87(2)(b) saw the slim officer and other plainclothes officers looking in the holding cell at the precinct asking who had the gun. § 87(2)(b) did not know the name of the other individual who was arrested for the gun, but said that he was 6’2”, and a little stocky. Other officers told Sgt. Fabara that this 6’2” individual was the one who was arrested for the gun. At some point when he had his hands up during this incident, § 87(2)(b) told the officers that it was the other guy in the cell with him who had the gun, but they didn’t believe him. § 87(2)(b) stated that he has never been arrested for possession of a gun and not been arrested for anything aside from § 87(2)(b)

The investigator spoke with § 87(2)(b) on December 7, 2005. [Encl. 11a] § 87(2)(b) said that he was coming in the store as § 87(2)(b) was coming out. As he went inside, he saw two NYPD officers take hold of the man, move him towards the wall of the store and frisk him. § 87(2)(b) said that he believed both officers had brown hair. He spoke with the officers afterwards and believed that the one who actually conducted the frisk was a sergeant because he seemed to be in charge and did most of the talking. § 87(2)(b) did not discuss the incident with the officers; he was talking to them about another problem the store was having with crime. § 87(2)(b)

Officer Interviews

Sgt. Carlos Fabara of the 101st Precinct was interviewed at the CCRB on January 4, 2006. [Encl. 13a-c] Sergeant Fabara’s memobook indicates that on October 26, 2005, he was working 9:30 a.m. to 6:14 p.m. tour and was the 101st Precinct anti-crime supervisor. [Encl. 12a-b] Shortly before 12:30 p.m. on October 26, 2005, Sgt. Fabara, PO Konoski and PO Florio were at a CVS at Beach 20th Street and Seagirt Avenue investigating an ongoing problem that it had with a shoplifter.

Sgt. Fabara first saw § 87(2)(b) inside the CVS. He could not remember specifically what § 87(2)(b) was doing at the time and he was not sure what the other officers saw. After the investigator asked Sgt. Fabara what § 87(2)(b) was doing, Sgt. Fabara said that he couldn’t remember offhand and asked to review the Stop, Question and Frisk Report (UF-250) that PO Florio had prepared after the stop. After reviewing the report, Sgt. Fabara said, “Yeah, he was making furtive movements.” When asked what those movements were specifically, Sgt. Fabara said, “Specifically, no, I can’t tell you what those furtive movements were but I know at the time he made movements that we determined to be furtive and that he was also wearing clothing or disguises that are commonly used in the commission of a crime and we became suspicious that he might have a firearm.” When asked if he could state what that clothing was, Sgt. Fabara said, “No, not right now. Maybe one of the other officers remembers.” When asked which officer made the decision to stop § 87(2)(b) initially, Sgt. Fabara said, “That was my decision. In addition to this, he was collared previously... at the same date and time that another male was arrested for a firearm and I thought that he might have been the one that was arrested for a firearm. To some degree I suspected that he had a history of carrying weapons.”

Sgt. Fabara said that he personally observed § 87(2)(b) making furtive movements but that he could not recall what they were. He then said that § 87(2)(b) was probably making movements towards his waistband and touched his waist area in a manner that, in Sgt. Fabara’s experience, looked like the way in

which people carrying firearms adjust them. When asked again if he specifically recalled § 87(2)(b) making these movements, Sgt. Fabara said, “Yes, I remember alerting the members of my team to that and we watched him closely until he exited the location.” He said that the officers then waited for § 87(2)(b) to leave the store because there weren’t as many people around outside. Sgt. Fabara and at least one of the other officers were in the store standing between the front door of the store and the cash registers when Sgt. Fabara first saw § 87(2)(b). § 87(2)(b) was between 10 and 20 feet away from the officers. Sgt. Fabara could not recall whether or not § 87(2)(b) moved around or just waited in line from the time that the officers first observed him to the time that he left the store.

The officers stopped § 87(2)(b) as he left the CVS. He left between five and ten minutes after the officers first saw him. Sgt. Fabara was not sure whether or not he was the officer who first approached § 87(2)(b) but he did recall speaking directly to him. He was unsure whether or not one or both of the other officers was standing with him during the stop and could not recall which of the three officers frisked § 87(2)(b). He knew that he questioned § 87(2)(b) and that an officer frisked him for weapons but did not find any on him. After the frisk, § 87(2)(b) was released and a Stop, Question and Frisk Report was completed. The stop lasted about two or three minutes. Sgt. Fabara was unsure specifically what he asked § 87(2)(b). The investigator noted that the box for evasive false and inconsistent response of officers’ questions was checked out on the report and asked Sgt. Fabara to describe how § 87(2)(b) answered the questions. Sgt. Fabara said, “I can tell you that they were evasive, false and inconsistent,” but could not elaborate about specific details. Sgt. Fabara did not ask § 87(2)(b) if he was “checking something” and is not familiar with that term. Sgt. Fabara could not recall whether or not § 87(2)(b) had an object of any sort in his pants. No officer pulled § 87(2)(b)’s pants back and looked at his behind at any point. No officer reached into § 87(2)(b)’s pockets and no officer removed anything from § 87(2)(b)’s pockets.

When asked why the box for “changing directions at the sight of police officers” was checked off, Sgt. Fabara said that he wasn’t sure why that box was checked off and couldn’t say whether it was noting § 87(2)(b)’s behavior inside the store or his behavior after he came out.

Sgt. Fabara said that the whole business district surrounding the CVS is known for violent crime and shootings and that this was the reason that the box on the Stop, Question and Frisk Report for “area has a high incidence of crime of type under suspicion” was checked off. He said that the “time of day” box was checked off because the area has a high incidence of daytime robberies.

The only other time that Sgt. Fabara had seen § 87(2)(b) § 87(2)(b) was standing in front of the desk at the 101st Precinct. Sgt. Fabara was under the impression that § 87(2)(b) was being arrested for illegal possession of a gun, but said that during the stop in front of the CVS, § 87(2)(b) said that he had never been stopped for carrying a gun. Sgt. Fabara later looked into it and discovered that § 87(2)(b) was right. The person who had been standing at the desk next to § 87(2)(b) was arrested for a gun and § 87(2)(b) had not been.

§ 87(2)(b) arrived at the CVS about five or ten minutes after § 87(2)(b) was released. She identified herself as § 87(2)(b). She was screaming and nasty to Sgt. Fabara during their encounter. Sgt. Fabara explained as best he could why he had stopped her son, saying that the officers thought that he had a firearm, that he had behaved nervously, and thought he had a history of gun possession. § 87(2)(b) continued to scream at Sgt. Fabara after he provided this explanation. § 87(2)(b) asked Sgt. Fabara for his name and shield number, which he immediately provided. § 87(2)(b) wanted to see the Stop, Question and Frisk form that PO Florio had filled out but Sgt. Fabara said that he couldn’t show it to her. § 87(2)(b) felt that her position as § 87(2)(b) afforded her special courtesy and was upset when Sgt. Fabara insisted that he could not show her the form. The other two officers were in the car and § 87(2)(b) did not speak with them to the best of Sgt. Fabara’s knowledge. Sgt. Fabara and § 87(2)(b) stood about five to ten feet away from the car.

Stop, Question and Frisk Report Worksheet (UF-250) for the stop and frisk of § 87(2)(b) [Encl. 14a-b]

PO Florio completed a UF-250 indicating that § 87(2)(b) was stopped for five minutes at 221 Beach 20th Street at 1:00 p.m. on October 26, 2005. He was suspected of criminal possession of a weapon. PO Florio indicated that “furtive movements” and “wearing clothing/disguises commonly used in the commission of crime” were the circumstances that led to the stop. The report indicates that § 87(2)(b) was frisked due to inappropriate attire that was possibly concealing a weapon and furtive movements. The report also states that no search was conducted and that no weapon or other contraband was found. Additional factors that led to the frisk were a high incidence of offenses of the type under investigation, the time of day corresponding to reports of criminal activity, proximity to a crime location, evasive/false/inconsistent answers to officer’s questions and changing direction at the sight of an officer.

PO John Florio of the 101st Precinct was interviewed at the CCRB on January 4, 2006. [Encl. 16a-c]

PO Florio’s memobook indicates that he was assigned to the 101st Precinct anti-crime team with PO Konoski and Sgt. Fabara on October 26, 2005. PO Florio also noted that he prepared a Stop, Question and Frisk Report for possible criminal possession of a weapon at the corner of Seagirt Boulevard and Beach 20th Street at 12:30 p.m. on that date. [Encl. 15a-b]

Shortly before 12:30 p.m. on October 26, 2005, PO Florio, PO Konoski and Sgt. Fabara were investigating a crime pattern at CVS and went inside to speak with a security guard. PO Konoski recognized § 87(2)(b) because he had previously arrested § 87(2)(b) for § 87(2)(b). Sgt. Fabara told the other two officers that § 87(2)(b) had also been brought in for gun possession. PO Florio, PO Konoski and Sgt. Fabara were all standing immediately inside the front door of the store when they saw § 87(2)(b). § 87(2)(b) was standing in the checkout line when the officers first noticed him. He was close to the exit of the store and the officers had an unobstructed view of him. § 87(2)(b) looked at the officers and PO Florio believed that he recognized them too. § 87(2)(b) began to act suspiciously at this point. § 87(2)(b) kept his hands inside the pocket in the front of the hooded sweatshirt that he was wearing and held them at his waistband. As the officers spoke to the store’s security guard about the previous crime, § 87(2)(b) got off the line and went to the back of the store. He then got back on line but didn’t have any products in his hand. Soon after that, § 87(2)(b) got off the line and left the store without buying anything. All three officers observed § 87(2)(b) hold his hands at his waistband, go to the back of the store, return to the line without any products and leave the store without making any purchases.

§ 87(2)(b) walked past the officers as he left the store. The officers then stopped him immediately outside the store because they believed that his actions were suspicious. They asked him what was going on, what he was reaching for, why he went to the back of the store and why he was waiting in line with no products in his hands. The officers then frisked § 87(2)(b) by patting him down and checking his waistband. To the best of PO Florio’s recollection, they did not find any objects on § 87(2)(b) at all. PO Florio was not sure which of the three officers actually frisked § 87(2)(b). All three officers were in § 87(2)(b)’s immediate vicinity when the stop was made. PO Florio recalled that he told § 87(2)(b) to keep his hands up but did not believe that he issued any further verbal instructions to him. PO Florio did not believe that § 87(2)(b) had his hands against the wall during the incident; he thought that § 87(2)(b) simply stood in place with his hands up in the air as he was frisked.

§ 87(2)(b) was wearing a sweatshirt and sweatpants. He had a big pocket in the front of his sweatshirt. PO Florio did not recall there being any pockets in his sweatpants. § 87(2)(b)’s hood was up during the incident. PO Florio did not recall the officers feeling any hard objects through § 87(2)(b)’s sweatpants. He said that any objects § 87(2)(b) might have been carrying could be easily felt through the sweatpants and that the officers did not reach into § 87(2)(b)’s pocket.

The entire stop lasted for about two minutes. After the incident, PO Florio learned that § 87(2)(b) had not been arrested for possession of a gun. He had been arrested with someone who had a gun.

The investigator and PO Florio reviewed the Stop, Question and Frisk form that PO Florio had filled out for § 87(2)(b) after the stop. PO Florio checked off the box for furtive movements because § 87(2)(b)

§ 87(2)(b)'s hands were at his waistband while he was in line and because § 87(2)(b) left the line, walked to the back of the store, then returned to the line, then left the store without purchasing anything. He checked off the box for wearing clothes commonly used in the commission of a crime because § 87(2)(b) was wearing a hooded sweatshirt with the hood up and it was not cold outside on the day that he was stopped. PO Florio thought that § 87(2)(b) was trying to conceal his face.

PO Florio checked off the box for "time of day" because he said that he stopped § 87(2)(b) during the daytime and said since CVS is closed late at night, crimes there happen during the day. He further explained that he and the other officers were at CVS investigating previous cases of petit larceny. People were known to come into CVS with bags, put items in the bags and run out of the store without paying. He said that there was also a homicide down the block from there under a month beforehand. The CVS is located in the business district, which is a high crime area in the precinct. PO Florio checked off the box for "changing direction at the site of an officer" because of § 87(2)(b)'s decision to leave the line and then leave the store after seeing the officers. PO Florio could not recall specifically what § 87(2)(b) said to make him check off the box for "evasive, false, or inconsistent response to questions." PO Florio said that he did not recall any specific questions that he or the other officers asked § 87(2)(b) outside of the store or any responses that § 87(2)(b) gave. Earlier in the interview, PO Florio gave a list of questions that he said the officers asked § 87(2)(b) but he did not repeat any of them when asked a second time what questions the officers asked § 87(2)(b).

PO Florio could not recall whether or not he or the other officers discussed § 87(2)(b)'s previous arrest for the knife or the incident with the gun with § 87(2)(b). After the officers patted § 87(2)(b) down, he left the scene without incident. PO Florio did not recall whether or not any of the officers asked § 87(2)(b) if he was "cheeking something." PO Florio said that he understands what cheeking means but wouldn't have used that term when addressing § 87(2)(b). PO Florio did not recall any of the officers pulling § 87(2)(b)'s pants back and looking at § 87(2)(b)'s behind at any point.

After § 87(2)(b) left, his mother, § 87(2)(b) arrived on the scene. PO Florio spoke with her very briefly. PO Florio was in the passenger seat of the officers' car when § 87(2)(b) pulled up in her car. § 87(2)(b) displayed her shield and PO Florio rolled down the window. § 87(2)(b) asked to speak with the officers. At that time, Sgt. Fabara said, "No ma'am, you can speak with me." Sgt. Fabara then stepped out of the officers' vehicle. § 87(2)(b) also exited her vehicle. She and Sgt. Fabara stood about 10 to 15 feet behind the officers' vehicle and spoke with each other. PO Florio could not hear what their conversation was about. § 87(2)(b) did not ask PO Florio for his name or shield number at any point. PO Konoski was in the officers' vehicle with PO Florio as § 87(2)(b) spoke with Sgt. Fabara. PO Florio did not recall whether or not § 87(2)(b) approached the officers' vehicle and asked PO Konoski for his name or shield number at any point. After finishing his conversation with § 87(2)(b), Sgt. Fabara returned to the officers' vehicle. He told the other officers that § 87(2)(b) was upset because the officers had stopped her son and she felt like she deserved more respect from the officers since she was a corrections officer. PO Florio was unsure whether or not § 87(2)(b) asked Sgt. Fabara for his name or shield number.

PO Eric Konoski of the 101st Precinct was interviewed at the CCRB on March 1, 2006. [Encl. 17a-c]
On October 26, 2005, PO Konoski was assigned to the 101st Precinct anti-crime team with Sgt. Fabara and PO Florio. At about 1:00 p.m. on October 26, 2005, PO Konoski, Sgt. Fabara and PO Florio went to a CVS pharmacy on Beach 22nd Street to have a discussion with the security guard there. At that time, PO Konoski saw § 87(2)(b) whom he recognized because he had previously arrested § 87(2)(b) for § 87(2)(b). PO Konoski also told the other officers that § 87(2)(b) looked like somebody who might have previously been arrested for possession of a firearm. The other officers did not mention anything about any previous experiences they might have had with § 87(2)(b). PO Konoski was not sure whether or not the other two officers were both right beside him for the entire time that he observed § 87(2)(b) on line, but he recalled that they observed § 87(2)(b) on line from somewhere inside the store.

§ 87(2)(b) looked nervous as he stood on line and appeared to recognize PO Konoski. After looking around the store and at the officers, § 87(2)(b) turned around and walked back into an aisle briefly, then got back on line. This raised the officers' level of suspicion. The officers continued to observe § 87(2)(b) as he paid and went outside. PO Konoski said, "He kept on looking at me, you know. It wasn't just like you see me – you see an officer – and then he's back in his regular routine. It was continual, him watching my motions what I'm doing. That's pretty much what mainly brought my attention do him."

PO Konoski and the other officers stood close to the front door of the CVS and continued observing § 87(2)(b) as he stood on line. After several minutes, § 87(2)(b) reached the front of the line, made a purchase and left the store.

PO Konoski was certain that § 87(2)(b) had a bag in his hand when he left the store. PO Konoski, PO Florio and Sgt. Fabara all left the store right after § 87(2)(b) did. PO Konoski said, "Hold up a second. Let me talk to you for a minute," to § 87(2)(b). After § 87(2)(b) stopped, PO Konoski asked § 87(2)(b) how his case for the § 87(2)(b) went. § 87(2)(b) began to stutter and look away as he spoke. PO Konoski "didn't want to waste any time and possibly have him use a weapon against us so [he] figured that the best idea would be to frisk the subject." When asked if he made any physical observations of § 87(2)(b) that suggested that he had a weapon on him, PO Konoski said, "Honestly, just his nervousness itself and his history. That in itself is enough to reasonably suspect and fear for our safety." When asked if he conducted the frisk or if it was one of the other officers, PO Konoski said, "I did." The other officers were right next to PO Konoski. When asked if they had physical contact with § 87(2)(b) PO Konoski said, "I don't know if they did. I remember checking him but I don't know if they checked his rear or whatever. I just remember what I did." PO Konoski remembered checking his waistband and down by his shoes, and feeling the outside of his pockets.

PO Konoski did not recall what § 87(2)(b) was wearing at the time of the stop. He did not recall feeling anything in § 87(2)(b)'s pockets and he was certain that he did not reach in the pockets and that nothing was removed from them. § 87(2)(b) did not have any weapons on him so the officers apologized to him for the inconvenience and sent him on his way. The officers had been outside the store with § 87(2)(b) for about two minutes in total.

Several minutes after § 87(2)(b) left, § 87(2)(b)'s mother, § 87(2)(b) arrived on the scene. The officers were sitting in their vehicle at the time. When Sgt. Fabara saw § 87(2)(b) he exited the officers' vehicle and approached her. PO Konoski and PO Florio both stayed in their vehicle and had no interaction with § 87(2)(b) whatsoever. Sgt. Fabara and § 87(2)(b) stood in front of the officers' vehicle when they spoke. PO Konoski could not remember if they were standing directly in front of the car or to one side or the other. The windows on the officers' car were up and PO Konoski could not hear what was being said outside. § 87(2)(b) did not say anything to PO Konoski or PO Florio at the time and she did not request their shield numbers from them at any point.

PO Konoski had arrested § 87(2)(b) for § 87(2)(b) on § 87(2)(b). He reviewed § 87(2)(b)'s arrest report for that incident with the investigator and confirmed that this was the previous arrest for § 87(2)(b) that he had referred to earlier in the interview. § 87(2)(b) was arrested with a man named § 87(2)(b), who was also § 87(2)(b). PO Konoski did not arrest § 87(2)(b) along with anyone who was in possession of a firearm at any point. He believed that the confusion about § 87(2)(b) being arrested for firearms possession happened because PO Thomas Cappolla of the 101st Precinct arrested someone for firearms possession who looked like § 87(2)(b) on some date after PO Konoski had made the arrest for § 87(2)(b). PO Konoski believed that he had seen this person in the station house from a distance and assumed that it was § 87(2)(b) without taking a closer look.

Additional Documents

101st Precinct Tour 2 Roll Call, October 26, 2005 [Encl. 20a-i]

The roll call indicates that Sgt. Carlos Fabara was the anti-crime sergeant and that PO John Florio and PO Eric Konoski were the anti-crime officers during this tour. No other officers are listed on the roll call as being assigned to anti-crime.

Criminal Conviction Records for § 87(2)(b) [Encl. 21a-e]

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)] It is based on a § 87(2)(b) arrest for § 87(2)(b). PO Konoski was the arresting officer. The arrest narrative indicates that § 87(2)(b) was arrested for being in possession of a gravity knife that was hanging from his right front pocket in plain view. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) was fined \$150. BADS indicates that PO Konoski arrested a man named § 87(2)(b) on that date. [Encl. 22c] § 87(2)(b) was arrested for being in possession of a gravity knife at § 87(2)(b) in the 101st Precinct, the same location where § 87(2)(b) was arrested. No one was arrested for possession of a firearm in the 101st Precinct on that date. [Encl. 22b]

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b)

Notice of Claim [Encl. 25d]

A phone call to Robert Howe, an investigator at the New York City Comptroller's office confirmed that § 87(2)(b) did not file a notice of claim in relation to this incident.

Civilians' CCRB Complaint Histories [Encl. 7a-b]

§ 87(2)(b) has never been involved in a CCRB complaint aside from this one. § 87(2)(b) has filed one complaint with the CCRB in addition to this one. § 87(2)(b)

Subject Officers' CCRB Histories [Encl. 6a-d]

Sgt. Carlos Fabara has not been found guilty of official misconduct in relation to any CCRB complaints that have been made against him since his appointment to the NYPD on August 31, 1998. PO Eric Konoski has not been found guilty of official misconduct in relation to any CCRB complaints that have been made against him since his appointment to the NYPD on July 1, 2002.

Conclusions and Recommendations

Officer Identification

All parties agree that Sgt. Fabara, PO Konoski and PO Florio were certainly the only NYPD officers on the scene. § 87(2)(b) said that one of the three officers on the scene was white, stocky, 5'8 tall, 26 or 27 years old and had arrested him for § 87(2)(b) several months beforehand. Since BADS indicates that PO Konoski arrested § 87(2)(b) for § 87(2)(b) on § 87(2)(b) it is certain that he was this officer. § 87(2)(b) said that PO Konoski was one of the two officers who frisked him and PO Konoski admitted to frisking § 87(2)(b). § 87(2)(b) said that the second officer who stopped him was white, slim, had black hair and was between 5'9" and 6'0" tall. Sgt. Fabara is Hispanic, but since he is 5'11" tall and was the only officer with black hair on the scene, there is no doubt that he is the second officer that § 87(2)(b) described. § 87(2)(b) said that the third officer who stopped him had blond hair but that he couldn't remember anything else about him. § 87(2)(g)
§ 87(2)(g) Though his hair color is listed as brown in his NYPD pedigree information, his officer photo [Encl. 18b] reveals that his hair is light brown and could understandably be mistaken for blond.

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Since § 87(2)(b) said that Sgt. Fabara identified himself and provided his shield number, it is clear that he was the officer who exited the officers' vehicle and spoke with her at length. § 87(2)(g)

According to § 87(2)(b) she approached the officers' vehicle and asked the officers for their shield numbers, and either PO Konoski or PO Florio responded to her by asking her who she was. § 87(2)(g)

§ 87(2)(b) said that after she asked the officers for their shield numbers a second time and said that she was going to file a complaint, Sgt. Fabara provided his and told her not to worry about the other officers. After taking it down, she left the scene. § 87(2)(g)

Facts in Dispute

§ 87(2)(g)

§ 87(2)(b) stated that PO Konoski and PO Fabara immediately grabbed him and frisked him as he walked out the door of the CVS. PO Konoski stated that he briefly questioned § 87(2)(b) about his § 87(2)(b) before noting that § 87(2)(b) looked nervous and deciding to frisk him. Sgt. Fabara said that he asked § 87(2)(b) questions and, after reading the Stop, Question and Frisk Report, stated that § 87(2)(b) gave "false or evasive answers" to those questions, but he had no recollection of what questions he asked or why the officers thought that § 87(2)(b)'s answers were false or evasive. He was also unsure which of the officers frisked § 87(2)(b). PO Florio stated that the officers asked § 87(2)(b) a few questions outside the CVS and then frisked him. He was unsure which officer conducted the frisk.

§ 87(2)(b) also said that PO Konoski had reached inside his pants pockets and pulled his sweatpants far enough away from him to look at his behind, and that Sgt. Fabara had asked him if he was "cheeking" something. Both PO Konoski and Sgt. Fabara denied the allegations, though PO Konoski said that it was possible that one of the other officers checked § 87(2)(b)'s rear and that he was only certain that he himself had not done so.

§ 87(2)(b) also said that he had told PO Konoski that he was the officer who had arrested him for § 87(2)(b) but that PO Konoski had denied it. According to PO Konoski, the first thing he asked § 87(2)(b) was how the case § 87(2)(b) went.

Credibility Analysis

§ 87(2)(g)

When asked what suspicious behavior § 87(2)(b) was exhibiting, Sgt. Fabara first stated that he was not sure what § 87(2)(b) had been doing and asked to review § 87(2)(b)'s Stop, Question and Frisk Report (UF-250) before further commenting on the matter. After reviewing the UF-250, Sgt. Fabara stated that § 87(2)(b) was making furtive movements and wearing clothing or disguises commonly used in the commission of a crime, reciting verbatim boxes that had been checked on the form. When asked what movements § 87(2)(b) was making and what clothing he was wearing, Sgt. Fabara replied that he could not recall. Later in his CCRB interview, Sgt. Fabara stated that § 87(2)(b) made movements towards his waistband and touched his waist area in a manner that, in Sgt. Fabara's experience, looked like the way in which people carrying firearms adjust them. He also stated that he alerted the members of his team to these movements and that the officers watched § 87(2)(b) closely until he exited the store. Sgt. Fabara did not mention these movements on several occasions earlier in the interview when the investigator directly asked him what suspicious movements § 87(2)(b) was making.

PO Florio did not mention anything about movements that § 87(2)(b) made towards his waistband. He stated that he was suspicious of § 87(2)(b) for two reasons: the first was because he kept his hands

in a front sweatshirt pocket and held them at his waistband. The second thing that PO Florio said raised his suspicion was that, after seeing the officers, § 87(2)(b) left the checkout line and walked back into an aisle, then returned to the line and stood there without any items to purchase, then left the line and exited the store without buying anything. PO Florio made no mention of § 87(2)(b) moving his hands or appearing to adjust anything, or of Sgt. Fabara pointing § 87(2)(b)'s suspicious movements out to him.

PO Konoski stated that though § 87(2)(b) left the line at some point, he returned to the line with items to purchase in his hands, made his purchases, and definitely left the store with a bag of items in his hand. He also noted that he had previously arrested § 87(2)(b) for § 87(2)(b) and that § 87(2)(b) looked nervous on line and continually stared at him. He made no mention of § 87(2)(b) having his hands in his pockets or making furtive movements towards his waistband. As mentioned above, when PO Konoski was directly asked what physical observations of § 87(2)(b) he made that suggested that § 87(2)(b) had a weapon on him, he stated, "Honestly, just his nervousness itself and his history. That in itself is enough to reasonably suspect and to fear for our safety." PO Konoski never mentioned that Sgt. Fabara pointed out § 87(2)(b)'s suspicious movements to him.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Both § 87(2)(b) and the officers stated that he and the officers looked at each other as he waited in line and that the officers stopped and frisked him soon after he left the store. § 87(2)(g)

Allegation A: Sgt. Carlos Fabara stopped and questioned § 87(2)(b)

Allegation B: PO Eric Konoski stopped and questioned § 87(2)(b)

§ 87(2)(g)

By § 87(2)(b)'s account, both Sgt. Fabara and PO Konoski grabbed him as he left the store. By PO Konoski's account, he asked § 87(2)(b) how his charges for § 87(2)(b) went and then grabbed § 87(2)(b) almost immediately afterwards because § 87(2)(b)

§ 87(2)(b) appeared to be nervous. Sgt. Fabara had no specific recollection of how § 87(2)(b) was stopped. § 87(2)(g)

As stated in Barry Kamins's New York Search and Seizure, in order to conduct a forcible stop, an officer must have reasonable suspicion that the person being stopped has committed or is about to commit a crime. (Kamins, p. 144) [Encl. 1a] Sgt. Fabara eventually stated that it appeared that § 87(2)(b) was adjusting a firearm, but he did not say this when first asked what § 87(2)(b) was doing, he did not say that he saw a bulge or anything resembling the outline of a firearm on § 87(2)(b)'s person, and the two officers who were with him did not note it at all. § 87(2)(g)

§ 87(2)(g) Kamins clearly states that "even if the defendant had been arrested by the officer on several previous occasions, that fact, combined with innocuous behavior in a high crime area, will still not generate reasonable suspicion. (Kamins, 165) [Encl. 2a] § 87(2)(g)

As outlined in *NYPD v. Dowd and Rose*, the fact that a given seizure is improper does not immediately lead to the conclusion that the officers who conducted it committed an act of official misconduct. *NYPD v. Dowd and Rose* provides the standard that "an improper search or seizure is punishable misconduct if the officer acted with knowledge that he was acting improperly, acted without concern for the propriety of his actions, or acted without due and reasonable care that his actions be proper." [Encl. 3c] § 87(2)(g)

Allegation C: Sgt. Carlos Fabara frisked § 87(2)(b)

Allegation D: PO Eric Konoski frisked § 87(2)(b)

§ 87(2)(g) they needed to have reasonable suspicion that they were in danger of physical injury. (Kamins, 166) [Encl. 4a] § 87(2)(g)

Kamins also provided two cases in which officers can legitimately frisk an individual with less than reasonable suspicion: first, when the person being stopped is a suspect in a violent crime and second, when the officers observe a bulge on the suspect's person that could reasonably be construed to be a weapon. (Kamins, 170) [Encl. 5a] § 87(2)(g)

§ 87(2)(g) [Redacted]
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§ 87(2)(g) [Redacted]
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Investigator:	Date:
Supervisor:	Date:
Reviewed by:	Date:
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